

# Egypt: The Right to Abduct

In the absence of effective mechanisms, Gihan Shahine finds, parental abductions seem to be the one sure way to resolve international custody disputes. "Only the hope that Ali will be back keeps me alive," said a distraught 41-year-old civil engineer, Hatem El-Bastawisy, referring to his six-year-old son. Ali was kidnapped from El-Bastawisy's Nasr City villa by a small group of unidentified, armed assailants late at night on 17 December.

He is currently in the custody of Taraneh (Tary) Javad, his Iranian-American mother. El-Bastawisy, then a US resident, had been granted temporary custody of Ali after his divorce. Following 11 September, however, Javad, who was enraged by the court ruling, spearheaded a media campaign against El-Bastawisy, whose condition as an Arab living in the US was more vulnerable than ever. When the school Ali attended requested that El-Bastawisy stop bringing in his son, the latter relocated to Cairo, where, he says, the child could grow up in a less tense atmosphere. Notwithstanding the injuries sustained by El-Bastawisy and his sister, Hanan, during the assault, it is the emotional pain of being separated from his son as well as concerns for his well being that pre-occupy the father.

Yet, having brought Ali from the US against his mother's wishes, such a tragic development should hardly come as a surprise. It is, the last episode in a prolonged custody dispute. Nor is El-Bastawisy's the only vendetta. Such incidents have become so commonplace they are fast turning into a global phenomenon. According to a recent BBC report, Britain has witnessed a 50 per cent rise in the number of parental abductions over the last three years. In addition to US State Department figures -- 1,100 US children are kept outside the US by a parent native to a foreign country -- PARENT, a US-based international organisation that helps locate missing and abducted children, estimates that 10,000 missing US children have been parentally abducted. Egypt has no statistics concerning parental abduction, but the registers indicate that over 35,000 Egyptians, mostly men, are married to a foreign spouse. 100 cases of parental abduction are recorded at the Ministry of Justice, and the Personal Affairs Court is currently investigating 1,500 international custody disputes.

Transnational marriages, many of which are undermined by cultural and religious differences, are more and more frequent due to greater numbers of immigrants and advances in communication technology. Barring the Hague Convention on International Child Abduction, which has proved ineffective, no legal mechanism exists for dealing with international custody disputes. The convention, in effect since 1980, provides for the immediate return of children to the country in which they have resided prior to the eruption of the dispute in question, giving the judicial system of that country the authority to adjudicate; it also asserts that a custody and visitation order from one country should be recognised by the courts of another. Roughly half of the world's states refused to participate in the convention, but even in the 53 participating states, the implementation of its terms is circumvented by administrative delays or point-blank refusal to return the children -- often on the grounds that it is in the child's best interest to remain in the country to which it was taken.

Egypt refrained from participating because the terms of the convention are not in agreement with Shari'a (the Muslim law), which remains

the basis of personal affairs jurisdiction in the country. Although parental child abduction is criminalised under Egyptian law, parents like El-Bastawisy have no legal means to recover their children. An Egyptian custody sentence is hardly effective in regaining custody of a child in a foreign country. According to Farouk Ghoneim, former deputy foreign minister for consular affairs, a legal battle in a foreign court, aside from being a time-consuming and expensive affair made all the more inconvenient by the difficulties Egyptians tend to encounter in obtaining a visa, is almost always lost. Confronted with a legal deadlock and denied a visa to visit his three children in Germany -- after they were abducted by their German mother three years ago -- tour guide Ibrahim Moussa kidnapped four German tourists in Luxor and bartered their release for the return of his children. The only result of such extreme behaviour, however, was the 15-year prison sentence Moussa is currently serving.

"It is terribly unfair, the way we are treated in our own country," Mohamed Fawzi Malash, a 49-year-old parent, complains. Malash has not seen his children (15-year-old Khaled, 13-year-old Tarek and 11-year-old Anwar) since 6 October 2002, when his Swiss wife, Elizabeth Holdz, took them back to Switzerland. Holdz had taken refuge within the embassy grounds for five months following a dispute with Malash, during which time Malash was denied contact with his children. The couple's marriage of 11 years had ended in 2000, after which Malash, a resident of Switzerland, brought the children to Egypt. Catching up with her ex-husband, Holdz lived with the children at the home of Malash's mother before she moved to the embassy grounds. "I don't even know where my children are now," Malash goes on. "Nor are the authorities doing anything about it. It's hopeless, hopeless..."

According to Ghoneim, Malash's story is typical. Most parental abduction scenarios start with a divorce abroad. The husband, an Egyptian immigrant, will not accept the court ruling -- usually joint custody. Concerned that his offspring will grow up belonging to a different culture and religion, he abducts the child and brings it home, where it is easier to obtain custody rights. On catching up with an Egyptian husband, a foreign wife can only seek recognition of a foreign custody order if that order is in accordance with Shari'a -- rarely the case.

Afaf El-Hennawy, 35, affords an altogether different variation on the same theme. Her happy marriage of two years ended abruptly when her 54-year-old Italian husband, Lodovico Romani -- who had been living and working in Egypt since she met him -- unexpectedly abducted their two sons, two-year-old Karim and nine-month-old Nour, on 9 September 1999. "Our marriage worked so well I was happily able to give birth twice within two years," she recounts bitterly. "Only now do I realise the stability and security was but a ploy -- to take my children away from me." While cooking dinner for her family of four, one ordinary afternoon, El-Hennawy suddenly found herself alone in the house. "At first I assumed my husband had decided to take the boys for a walk," she says. A few hours later -- El-Hennawy had already filed a missing persons' report at the nearest police station -- Romani phoned to say they were already in Italy and would never be back. It was, she says, devastating. Having spent all her savings, even selling her belongings, in order to gain legal custody of her children in Egypt, El-Hennawy remains hopeless.

One Egyptian initiative, however, does afford a glimmer of hope -- a special committee founded in 2000 and affiliated with the Ministry of Justice, which attempts to settle custody wars by cordial means. "We invite both parents in to discuss possible compromises," Mohsen

El-Atawi, the committee head, explains. "We also help reassure parents, both in Egypt and elsewhere, about the well-being of their children, by checking in the children's country of residence, and sometimes organise international visits." Without the cooperation of the relevant spouse, however, the committee has no legal mandate to interfere. According to El-Atawi, the committee cannot even legally vouch for the safe return of a parent who is visiting his or her children in a foreign country. "All we can do," he says, "is issue recommendations to encourage support from consulate offices or the Interpol in case such support is needed."

For his part Ghoneim insists that such cordial compromise remains the most effective means to settling custody disputes involving two countries, usually at odds with each other in legal terms -- not to mention cultural differences. "There is seldom a clear-cut answer to an international custody dispute," he says. "From the viewpoint of each parent, it's always in the child's best interest to remain with them." He also agrees with Ghoneim that, in many cases, it is in a foreign mother's best interest to file for custody in Egypt, since Shari'a grants the woman custody of the children until they reach "the age of maturity" (10 for boys, and 12 for girls) -- subject to extension. Under Shari'a, El-Atawi adds, foreign and non- Muslim mothers are treated in exactly the same way as Egyptian or Muslim women. Yet in practice a foreign mother might still experience difficulties trying to gain custody of her child in Egypt. "For example," lawyer Mamdouh Riyad explains, "the judge might refuse to grant the mother custody unless she lives in Egypt -- to ensure that the father would be able to see his children. Children born to an Egyptian father are automatically given Egyptian citizenship and legally should not leave the country without the father's official consent."

According to the US press, one American Muslim mother, Juan Faber, resorted to abducting her seven-year-old son, Adam on 13 September 2001, when the US government failed to provide economic or legal support in the process of persuading the Egyptian government to return the child. Adam's Egyptian father, Ahmed Naby, had brought the child to Egypt on 11 November 2000 in violation of a US joint-custody order. According to Faber, beyond the occasional, "supervised" mobile phone call, Naby refused to let her have any contact with Adam. "There are hundreds of parents, mainly fathers who decide to take matters into their hands and remove their children from the United States to their home country," Faber wrote in an open letter that appeared on crescentlife.com, a private Web site tackling a variety of social issues. "Once our children are there we are at the mercy of the foreign court, and basically, we can kiss our children goodbye because these courts normally will not cooperate with a foreign parent, especially a mother."

Yet Faber's contention is not true. Cornelia Streeter, one American mother who was granted custody of her two children, aged seven and nine, following a two-year battle in the Egyptian courts, found herself back where she started when her wealthy Egyptian husband, Anwar Wissa, fled with the two children once again -- first to Spain, then to Cuba. After their divorce in 2001, Wissa had smuggled the children out of the United States aboard his private jet, landing in Egypt, where the children remained until Streeter gained their custody in 2002. Last June, in a climax worthy of a blockbuster action flick, Wissa was finally arrested in Cuba and the children flown back to the US with their mother.

According to US federal figures, as many as 22 per cent of parent abductors employ professional mercenaries to locate and abduct their children. The renowned Gus Zamora, for one such mercenary, claims 40 successful "snatch-back operations" on his Web site; he

charges US\$65,000 to \$200,000 per case. Women are said to engage in abduction more often than men. In fact the so called child-recovery black market has been so buoyant the US Department recently issued an official warning to parents against "desperate and possibly illegal measures" that jeopardise their children's safety and psychological well-being. Faber told Newsday.com that she employed Zamora to recover her son from Egypt for \$65,000, explaining how, following Zamora's instructions, she had worked to allay any concerns her ex-husband might have about her kidnapping their child, acting submissively and pretending that she believed it was best for her son to stay in Egypt. For days Zamora's description of Adam Naby's "risky recovery" -- another action flick involving a hideout in Hurghada and a brief sojourn in Germany -- overwhelmed the press. "Egypt is an armed police state," Zamora told the *Times* of Northwest India. "Every other corner has a soldier or policeman armed with Kalashnikov (a Russian-made assault rifle)." In the same interview, Zamora said an "aggressive recovery [is always] the last option," and in case of Adam, US\$5,000 were paid in bribes to Egyptian immigration and border officials helped him flee the country with Faber.

Adam Naby's was apparently not the last professional child-recovery operation to take place in Egypt. According to the Egyptian police, Ali El-Bastawisy's abduction was an instance of organised crime. And more such crime is to be expected. Pilot Amr Darwish has reported receiving an anonymous phone call warning him that an international organisation had been hired to abduct his children, aged eight and six. Darwish had returned from the US to Egypt with his children when his American ex-wife followed in the footsteps of El-Bastawisy's -- threatening to put him in jail on ambiguous charges of "Arab terrorism".

"Cross-cultural marriages are not advisable," Khalil Fadel, a consultant psychiatrist who spent 20 years in the US and Europe, explains. "Many transnational marriages work, but the majority fail, and when children are involved, it is tragic." Khalil has witnessed numerous cases of Egyptian young men marrying a foreigner in order to gain residence rights in the West, where, they believe, a better future awaits them. According to Khalil the Internet has made the process more viable, facilitating all manner of virtual meetings.

But even when a cross-cultural marriage is based on mutual understanding, Fadel insisted, culture shock often intervenes. "Cultural clashes peak as each parent begins to instill in his or her children loyalty for his or her culture and religion. It is the children who are victimised." The resulting identity crisis has many adverse effects: "The children of broken transnational marriages may be more predisposed to aggression, poor concentration, depression and low academic achievement in spite of intelligence. Parental abduction," he adds, "is the most traumatic experience a child may have in his or her life. Parentally abducted children usually suffer post traumatic stress disorder -- nightmares, insomnia, tremors, complete absence of trust -- and are more prone to obsessive compulsive disorder, which turns them into hesitant, frightened, identity-less characters for life."

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# Egypt & Child Abduction: 2018 State Department Report

## From the State Department's 2018 Compliance Report:

Egypt demonstrated a pattern of noncompliance in 2017 because 30 percent or more of the total abduction cases are unresolved abduction cases as defined by the Act.

The Egyptian government worked closely with the U.S. Embassy in Cairo to help left-behind parents obtain access to their children. It also facilitated voluntary agreements between parents to return abducted children. While Egypt and the United States signed a Memorandum of Understanding (MOU) on Consular Cooperation in Cases Concerning Parental Access to Children in 2003, this Memorandum does not address the resolution of abduction matters and thus does not meet the Act's definition of bilateral procedures. Egypt has no other procedures in place for returning abducted children and therefore does not adhere to any protocols with respect to international parental child abduction, as described in the Act.

During 2017, the Department had 25 reported abductions to Egypt relating to children whose habitual residence is the United States. Of those, nine were newly reported during the calendar year.

In 2017, 20 applications for return that the Department had submitted to Egypt were pending; the Department submitted eight of these applications during 2015. By December 31, 2015, two cases with pending applications (10 percent of cases open during 2015) had been resolved, as defined by the Act: one was resolved by a voluntary agreement between the parents that resulted in the child returning to the United States; the other was resolved when the left-behind parent did not pursue the return any further. Three other cases closed prior to submission of applications for return. By December 31, 2017, 20 reported abductions remained open.

At the end of 2017, ten cases (50 percent of cases open during 2017) were unresolved. A case is considered "unresolved" under the Act if it remains pending for twelve months after the Department submits an application for return or access to an appropriate authority in Egypt. There were no unresolved abduction cases in which law enforcement authorities failed to locate a child, failed to undertake serious efforts to locate a child, or failed to enforce a return order rendered by the judicial or administrative authorities of Egypt. The average time it takes to locate a child is unknown.

To improve the resolution of international parental child abduction cases in Egypt, the Department recommends continued engagement between the Department of State and Egyptian government officials to encourage Egypt to become party to the Convention and to

establish other protocols or procedures for resolving international parental child abduction cases.

# State Department Report: Egypt and Child Abduction

## EGYPT AND CHILD ABDUCTION

**Parental Kidnapping:** The removal of a child by the non-custodial parent to or within Egypt is *not* a crime in Egypt unless the child is subject to Egyptian court-ordered travel restrictions. Additionally, parents should be aware that they must work within the Egyptian court system in order to obtain legal custody of the child in Egypt.

Once the custody order is obtained, the parent must go to the district family court for its implementation. The president of the court has the authority to request that the police enforce the custody order and/or impose a penalty on the noncustodial parent for noncompliance with the custody order.

**Dual Nationality:** Egypt recognizes the concept of dual nationality. Under Egyptian law, children born to an Egyptian father are automatically considered citizens of Egypt. Egyptian mothers of children born to a non-Egyptian father, however, should submit requests to the Egyptian Passports, Immigration and Nationality Authority, Egyptian Embassies or Consulates overseas, and/or the Civil Registration Office to register their children as Egyptian citizens.

**Enforcement of Foreign Court Orders:** A parent can request that a foreign custody order be recognized in Egypt, but enforcement will result only if the order does not contravene Shari'a law and "paternal rights." Therefore, as a practical matter, foreign custody orders are not generally automatically recognized in Egypt, and the parent must seek legal representation in Egypt.

**Jurisdiction and Right of Custody:** Egyptian Family Courts within the jurisdiction of each summary court have legal jurisdiction to hear child custody petitions.

**Presumptive Custody:** Under Egyptian law, the courts generally favor the mother. Mothers are most commonly considered to be the appropriate custodians of children up to age 15. Normally, if custody disputes arise between parents, Egyptian courts uphold presumptive custody. Courts in Egypt generally uphold presumptive custody for the mother if she is a "person of the book" (i.e., Muslim, Christian or Jewish) and if she is deemed to be a "fit" mother. If the father is Muslim, the court generally requires that the mother commit herself to raise the child as a Muslim in Egypt. If a non-Egyptian mother's custody is upheld in court, she generally must still request the permission of the court to take the children out of Egypt. Also, under Egyptian law, if the mother (Muslim or non-Muslim) remarries she may lose her claim to custody of her children, depending on the court's determination based on the best interests of the child. This law,

however, does not apply to the father; he would normally retain custody rights if he remarries.

**Order of Preference for Non-Parental Custody:** The mother may lose presumptive custody due to remarriage or inability to counter court findings that she is an “unfit mother.” In such cases, the courts recognize an order of preference of alternate adult custodians with priority given to the mother's family in the following order: maternal grandmother or great-grandmother; paternal grandmother or great-grandmother; maternal aunt; paternal aunt; maternal niece; paternal niece. If these relatives do not exist, the right of custody shifts to a male in the following order of priority: maternal grandfather; maternal brother; maternal nephew; paternal brother.

**Right of Visitation:** By law, visitation depends on the willingness of the custodial parent. If a father has custody and does not voluntarily agree to visitation, the local authorities will generally not force the issue without a court order. The parent will have to seek a court order to enforce visitation.

**Egyptian Good Intentions Subcommittee:** In February 2000, the Egyptian Government established an interagency committee consisting of representatives from several ministries to review international child abduction cases in Egypt. This committee established the Good Intentions Subcommittee, which can act as a mediator between the taking and the left-behind parent. U.S. Embassy personnel meet regularly with the Subcommittee which seeks the abducting parents' cooperation in providing access to abducted children and keeping all parties informed of developments regarding abduction and custody issues. As a result of these mediations, access and/or visitation for some children has been achieved.

**Egyptian/American MOU on Parental Access:** In October 2003, the U.S. and Egypt signed a Memorandum of Understanding (MOU) that confirms both countries' commitment to facilitating parental access to children in the other country. Both the U.S. and Egypt agree that a left-behind parent should have meaningful access to his or her child or children. However, the MOU recognizes that facilitating parental access may occur in tandem with efforts to return children to their custodial parents.

Currently, however, there are no international or bilateral treaties in force between Egypt and the United States dealing with international parental child abduction. Egypt is not a signatory to the Hague Convention on the Civil Aspects of International Child Abduction. Thus, this treaty cannot be invoked if a child is taken from the U.S. to Egypt by one parent against the wishes of the other parent or in violation of a U.S. custody order.

**Travel:** Currently, the father's permission is not required for children to depart Egypt unless there is a custody order that explicitly grants custody to the father. Egyptian fathers no longer have absolute control over their children's right to travel abroad. They can still prevent their children from traveling, but must do so by means of a court order.

**Travel Restrictions (Wife):** Due to a Supreme Court decision in March 2000, an Egyptian wife no longer requires the permission of her Egyptian husband to obtain a passport and depart the country. In the case of a child custody dispute, however, either spouse may obtain a court order preventing the other spouse from traveling until the dispute has been resolved.



